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In re Application of :  
Ari ayalon et al :  
Serial No.: 09/714,351 : DECISION ON PETITION  
Filed: November 16, 2000 :  
Attorney Docket No.: 1662/50302 :

This letter is in response to the Petition under 37 C.F.R. 1.181, filed March 5, 2007, to require the examiner to withdraw an objection to the claims.

#### BACKGROUND

A review of the recent file history of this application shows that the examiner mailed a non-Final Office action to applicants on May 4, 2006, objecting to claims 1, 3-6 and 16-17 as being substantial duplicates of claim 2. The examiner also rejected the same claims under 35 U.S.C. 112, second paragraph, for the same reason. Claims 16 was further rejected under 35 U.S.C. 112, first paragraph, as lacking enablement, and under 35 U.S.C. 102(b) as anticipated by Briggs et al or McKenzie et al. Claim 2 was indicated allowable.

Applicants replied on October 4, 2006, addressing the rejections and objections appropriately and making minor amendments to claims 3 and 17.

The examiner mailed a Final Office action to applicants on December 29, 2006, maintaining the objection to claims 1, 3-6 and 16-17 as substantial duplicates, as well as the rejection of the same claims under 35 U.S.C. 112, second paragraph for the same reason. Claim 2 was indicated allowable. No art rejections were made.

Applicants filed this petition on March 6, 2007, requesting the Office to require the examiner to withdraw the objection to the claims set forth above.

#### DISCUSSION

Applicants complain that the examiner is improperly denying applicants the right to claim their invention in alternative manners and that such is permitted in view of various court decisions, such as *In re Chandler*, 138 USPQ 138 and others.

Inasmuch as the objection to the claims as being substantial duplicates of each other is also the subject of a rejection under 35 U.S.C. 112, second paragraph, the objection cannot be separated from the rejection which must be appealed to the Board of Patent Appeals and Interferences.

#### DECISION

The petition is **DISMISSED** as moot in that it is not directed to a petitionable matter.

**Applicant remains under obligation to file an appropriate reply to the Final Office action within the time period set therein, or as extended under 37 CFR 1.136(a).**

Any request for reconsideration of this decision must be filed within TWO MONTHS of the mailing date thereof in order to be considered timely.

Should there be any questions regarding this decision, please contact Special Program Examiner William R. Dixon, Jr., by mail addressed to Director, Technology Center 1600, PO BOX 1450, ALEXANDRIA, VA 22313-1450, or by telephone at (571) 272-0519 or by Official Fax at 571-273-8300



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